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Declaration with Exhibits (37 CFR 1.132)

Filed on April 17, 2007 (as shown by Auto-Reply copy below)

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0-PR-17-2007 ATTEN: ST CHRISTOPHER'S HOSPITAL 6-PI

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Charles C. Towley Attn: Group Art Unit 3731
Serial No. 10/759,455 Primary Examiner
Filing Date 01/19/2004 Brian S. Follegren
Docket No. TOWLEY-004010
MODULAR BONE TIES FOR JOINT IMPLANTS

ABSTRACT

Counselor for Patents, Alexandria, VA 22311-14501

I certify that this correspondence is faithfully transmitted to the Patent and Trademark Office (371 373 6300) on 17 APR 2007:

CHRISTOPHER JOHN RUTY: Christopher John Ruty [Signature]

Thank you for the 01/17/2007 Office action for the present application. In reply to that action, please reconsider and further amend the present application, and in light of the present correspondence withdraw the standing rejections.

CLAIMS AMENDMENTS are attached hereto.

This amendment more particularly points out and distinctly claims the invention, and is fully supported by the original and underlying specifications, including drawings. No new matter is added hereby. Claims 21-41 remain present. No extra fee due.

Insofar as species A is cited as a one-piece bone than joint implant, the above of the 35 USC 111 recitation of species is withdrawn. All present claims, which require modularity, read on the thus elected and examined species, 3, C and E.

As may apply to the present claims, each of the rejections set forth in the outstanding notice is respectfully traversed.

Regarding the rejection of claims 21-24, 36, 40 and 41 under 103 USC 103(b) over Towley, US 2004/066, each of claims 21 and 41 requires a head or a flange for anchoring in and articulating with a correspondingly shapedly prepared surface of trapezium base stock, and its item of a hinge for intramedullary insertion in osteocarpal bone extent. Such are limitations are material claim elements and must be taken into account. See, In re Kirschberg, 578 F.2d 204, 205, 348 F.R.P. 1977. Towley's disclosure does not describe either of these sole limitations. In fact, the device of Towley '065 is a hip implant, which is well known to be much larger than a head than joint implant. Moreover, modularity to the hip implant of Towley '065 is not described, and unlike their found in some present claims, no general angle of projection in Towley '065 is recited it is perpendicular. Thus, claims 21, 22, 40 and 41 distinguish over Towley, and, by virtue of their dependence, claims 23, 24 and 26 distinguish as well.

FURTHER REMARKS conclude the present paper (pages 7-11).

Submitted herewith is a Declaration with exhibits.